IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 720 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAVJIBHAI MAGANBHAI PARMAR

Appearance:

1. Special Civil Application No. 720 of 1999

MR HARDIK C RAWAL for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/04/2005

C.A.V. JUDGEMENT

By way of filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgement and Award dtd.24/9/1998 passed

by the Industrial Tribunal, Ahmedabad in Complaint (I.T.) No.69 of 1996 in Reference (I.T.) No.63 of 1996, whereby the Tribunal quashed the order dtd.3/2/1996 passed by the petitioner Corporation superannuating the respondent w.e.f. 31/7/1996 and directed the petitioner Corporation to continue the respondent in service till he attains the age of 58 years as per the Certificate dtd.28/4/1981 issued by the Civil Surgeon with all consequential benefits. The Industrial Tribunal also directed to the petitioner to pay Rs.500/- to the respondent towards costs and to comply with the award within 30 days from the date of publication of the award.

2. Mr.Hardik C. Raval, learned counsel for the petitioner Corporation has mainly argued that on 23/5/1960, the respondent applied for the post of helper at Central workshop of the petitioner, situated at Naroda, in prescribed application form; at that time he was not having any proof of date of birth and hence in the column of date of birth, he mentioned about 22 years; thereafter the respondent continued in service of the petitioner; by letter No.10941 dtd.17/8/1979 the petitioner directed to the respondent to produce certificate showing his birth date and for this purpose, the respondent had gone to Khandera School, situated at Rajkot, but he came to know that the said school was closed and all the authorities of school have shifted to Goa and he, therefore, could not produce the birth certificate; by letter dtd.28/4/1981, the Civil Surgeon issued a Certificate showing the approximate age; before that on 18/2/1981 by outward NO.2196 the respondent was informed by the petitioner that on 30/6/1981, he will be superannuated on completion of 58 years, however, before that the respondent produced a certificate from Civil Surgeon dtd.28/4/1981 showing approximate age and hence by order dtd.5/6/1981, the petitioner cancelled the order superannuating the respondent w.e.f. 30/6/1981 and continued the respondent in service; thereafter, as per the statement of the respondent, when the he completed 58 years, the petitioner superannuated the respondent vide order dtd.3/2/1996 w.e.f. 31/7/1997 and the said order is just, proper and in accordance with law; the petitioner has superannuated the respondent considering the fact that in the application when the respondent applied for job on 23/5/1960, he has stated that he was aged about 22 years, meaning thereby he was born in 1938 and the petitioner calculated the age of the respondent on that basis and superannuated on completion of 58 years on 31/7/1996 which is legal and proper, but the labour court failed to appreciate the said material fact; it is settled law that in no case at the fag end of service

career of a person, dispute with regard to the date of birth shall not be entertained; the respondent was directed to produce his birth certificate but he could not produce the same and thereafter the petitioner was compelled to send him to Civil Surgeon and as per the certificate issued by the Civil Surgeon in 1981 the respondent as aged 40 years, but the same was not accepted by the petitioner Corporation and as per the say of the respondent, his actual birth date was treated as in July, 1938 he has been superannuated from 31/7/1996 as per rules and regulations which is legal and proper and hence the impugned Award is required to be quashed and set aside.

3. On the other hand, Mr.D.C. Bhatt, learned counsel for the respondent has strongly opposed this petition contending that the impugned Award is just, legal and proper and no error is committed by the Industrial Tribunal; the impugned Award is based on documentary evidence; that the present petition has been filed under Articles 226 & 227 of the Constitution of India and as per the settled law, this Court has very limited jurisdiction under Articles 226 and 227 of the Constitution of India and therefore, this Court may not interfere with the finding of fact arrived by the Industrial Tribunal; that while applying for job on 23/5/1960, in the application form the respondent had specifically stated that he do not know his birth date; that in 1981 the petitioner Corporation directed the respondent to obtain Certificate of Civil Surgeon for ascertaining age of the respondent and as per the Certificate issued by the Civil Surgeon dtd.24/8/1981, the age of the respondent was 40 years at that point of time and the same was produced before the authority at the relevant time and also before the Industrial Tribunal at Ex.15 and therefore, the order of superannuating on the ground of attaining the age of retirement was came to be cancelled by the petitioner itself by order dtd.5/6/1981, which is produced at Ex.16 and thus the petitioner had accepted the said Certificate issued by the Civil Surgeon and the respondent was permitted to work till he attains age of 58 years as per the said Certificate, but unfortunately on 3/2/1996 the order superannuating the respondent was passed by the petitioner, against which the respondent made representation dtd.12/9/1996 and 7/2/1996 which remained unresponded and hence the respondent approached the Industrial Tribunal for redressal of his grievance and the Industrial Tribunal has passed the impugned Award considering the material on record; that when the respondent produced the Certificate in 1981 issued by the

Civil Surgeon, no objection was raised by the petitioner about the certificate and the age of the 40 years and therefore, the respondent was entitled to work up to 1999, therefore, the order of superannuation dtd.3/2/1996 is illegal and the same has been rightly passed the impugned Award; that except the certificate of Civil Surgeon dtd.28/4/1981, there is no evidence regarding age of the respondent with the petitioner Corporation to put to end the service of the respondent w.e.f. 3/2/1996; that once the petitioner accepted the Certificate issued by the Civil Surgeon in 1981, the respondent is entitled to work up to 1999, and the petitioner cannot pass order of superannuation prior to 1999, and hence the Industrial Tribunal has rightly quashed the order of superannuation while passing the impugned Award. He has placed reliance on the following decisions;-

[1] 1999 (8) SCC 16
[2] 1959 (2) LLJ 666
[3] 1959 (2) LLJ 556 and
[4] 1962 LLJ 712.

4. Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that at the time of applying for job, in the application form, the respondent had neither mentioned his birth date nor produced any evidence regarding his age, but he has only mentioned that he was aged about 22 years at that time. Thereafter, the petitioner directed the respondent to produce his birth certificate, but due to closure of the School, the respondent could not produce his birth certificate and therefore, the petitioner directed to the respondent to produce Birth Certificate from the Civil Surgeon. On 18/2/1981 the petitioner informed the respondent that on 30/6/1981 he will be superannuated on completion of 58 years. Prior to 30/6/1981, the respondent produced Certificate dtd.28/4/1981 issued by the Civil Surgeon showing the approximate age of the respondent as 40 years on that date and hence, the petitioner passed order dtd.5/6/1981 cancelling order of superannuation dtd.18/2/1981 and continued the respondent in service till 1996. Thus, the petitioner accepted the certificate issued by the Civil Surgeon from 1981 till 1996. But suddenly on 3/2/1996 the petitioner passed order superannuating the respondent w.e.f.31/7/1996 on the ground that the respondent has mentioned his age as 22 years in his application while applying for job on 23/5/1960 and hence he has attained the age of superannuation. Thus, the petitioner has accepted the Certificate of the Civil Surgeon from 1981 to 1996 and the order of superannuation dtd.3/2/1996 has been passed

after a period of 15 years years and prior to that the petitioner had cancelled the order of superannuation dtd.18/2/1981 vide order dtd.5/6/1981 accepting the certificate of the Civil Surgeon. The said order of superannuation has been passed without giving any opportunity or notice to the respondent. The respondent has not given any reason as to why the certificate of the Civil Surgeon is not accepted by the petitioner after 15 years. There is no evidence with the petitioner regarding the age of the respondent except the Certificate of the Civil Surgeon and once the petitioner has accepted the Certificate, and continued the respondent from 1981 to 1996, the petitioner is duty bound to continue the respondent till 58 years as per the said Certificate and the petitioner cannot pass order of superannuation prior to 58 years as per the said Certificate. It is pertinent to note that by passage of time the respondent has attained the age of superannuation in April, 1999 as per the Certificate issued by the Civil Surgeon and hence, the respondent is entitled to the back wages from 3/2/1996 to April, 1999.

5. In view of the above, I do not find any merits in this petition. The impugned Award is just, legal and proper and no error is committed by the Industrial Tribunal while passing the impugned Award.

6. In the result, the petition is dismissed. Rule is discharged. Interim relief stands vacated.

7. The petitioner is directed to comply with the Award and pay backwages to the respondent forthwith.

(Sharad D.Dave,J.)

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